

SECRETARY OF STATE[721]

Adopted and Filed

Rule making related to election administration and voting

The Secretary of State hereby amends Chapter 21, “Election Forms and Instructions,” and Chapter 28, “Voter Registration File (I-Voters) Management,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 17A.4, 47.1 and 53.1A.

State or Federal Law Implemented

This rule making implements, in whole or in part, 2021 Iowa Acts, Senate File 413.

Purpose and Summary

This rule making adds new rules and amends existing rules, including Iowa Code citations, in accordance with 2021 Iowa Acts, Senate File 413.

This rule making makes necessary adjustments to accommodate for the implementation of a sure count deadline for absentee ballots; updates rules related to the use of Intelligent Mail barcode (IMb) Tracing to reflect its continued use for Safe at Home and Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) voters; provides for new rules regarding the issuance of technical infractions pursuant to Iowa Code section 39A.6; brings rules regarding the establishment of satellite voting locations into compliance with 2021 Iowa Acts, Senate File 413; creates rules regarding the establishment of drop boxes for voted absentee ballots; puts in place processes for utilizing reports provided by the electronic registration information center (ERIC); and outlines the requirements for voter list maintenance reports.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on October 6, 2021, as **ARC 5958C**. No public comments were received. Nonsubstantive changes from the Notice have been made to make the formatting of the term “I-Voters” consistent.

Adoption of Rule Making

This rule making was adopted by the Secretary of State on November 10, 2021.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Secretary of State for a waiver of the discretionary provisions, if any, pursuant to 721—Chapter 10.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on January 5, 2022.

The following rule-making actions are adopted:

ITEM 1. Amend subrule 21.2(2) as follows:

21.2(2) Original absentee ballot applications. The original absentee ballot application submitted electronically shall also be mailed or delivered to the commissioner. If mailed, the envelope bearing the original absentee ballot application shall be postmarked not later than the voter registration deadline provided in Iowa Code section 48A.9 for the election for which the ballot is requested. This subrule shall not apply to documents submitted electronically by UOCAVA voters pursuant to rule 721—21.320(53).

~~a.~~ The voter's absentee ballot shall be rejected by the absentee and special voters precinct board if the original absentee ballot application which was filed electronically is not received by the time the polls close on election day.

~~b.~~ The voter's absentee ballot shall be rejected by the absentee and special voters precinct board if the postmark or Intelligent Mail barcode (IMb) on the envelope containing the original absentee ballot application is either illegible or later than the voter registration deadline provided in Iowa Code section 48A.9 for the election for which the ballot is requested.

ITEM 2. Amend rule 721—21.12(47,53) as follows:

721—21.12(47,53) Absentee ballot receipt deadline when the United States post office is closed on the deadline for receipt of absentee ballots. When the United States post office is closed in observance of a federal holiday and is not delivering mail on the deadline for receipt of absentee ballots as set forth in Iowa Code ~~section 53.17~~ sections 9E.6 and 53.44, the deadline to receive mailed absentee ballots that are determined to have entered the federal mail system timely, as indicated by the postmark or Intelligent Mail barcode (IMb) Tracing, shall move to the next business day on which mail delivery is available.

This rule is intended to implement Iowa Code sections 9E.6, 47.1, and 47.4 and ~~sections 53.17 and 52.22 as amended by 2016 Iowa Acts, House File 2273, sections 11 to 15~~ 53.44.

ITEM 3. Amend rule 721—21.14(53) as follows:

721—21.14(53) Intelligent Mail barcode (IMb) Tracing. A commissioner ~~may choose to~~ shall use Intelligent Mail barcode (IMb) Tracing (IMb Tracing) to determine when an absentee ballot has entered into the federal mail system as an alternative to a traditional postmark verification for the purposes of Iowa Code sections 9E.6 and 53.44.

21.14(1) Notice to state commissioner of elections required.

a. Prior to a commissioner's implementation of IMb Tracing for an election, notice must be sent to the state commissioner.

b. A commissioner may not implement or discontinue the use of IMb Tracing while an election is open once absentee ballots have been mailed pursuant to Iowa Code section 53.8.

c. The state commissioner may issue a waiver to paragraph "~~b~~" 21.14(1) "b" if a commissioner's ability to use IMb Tracing is impacted by issues beyond the commissioner's control.

21.14(2) Determining the eligibility of IMb-marked absentee ballots. An absentee ballot shall be counted once it is determined that the absentee ballot arrived in the federal mail system by the deadline specified in Iowa Code ~~chapter 53~~ sections 9E.6 and 53.44. The absentee ballot's entry into the federal

mail system may be verified either by a postmark or by information obtained through IMb Tracing. For absentee ballots received after election day, but before the official canvass:

a. If the postmark or IMb Tracing information indicates that an absentee ballot was received by the deadline specified in Iowa Code ~~chapter 53~~ sections 9E.6 and 53.44, the ballot shall be included for canvass by the absentee and special voters precinct board (board).

b. If the postmark is illegible, missing, or dated on or after election day, the commissioner shall attempt to verify the absentee ballot's entry into the federal mail system by using the IMb Tracing information for the ballot. The commissioner shall provide all of the materials to the board.

c. If there is a date discrepancy between the postmark and the IMb, the earlier of the two shall determine whether or not the absentee ballot can be counted.

d. If neither the postmark nor the IMb indicate that the absentee ballot entered the federal mail system by the deadline specified in Iowa Code ~~chapter 53~~ sections 9E.6 and 53.44, the absentee ballot shall not be counted.

e. The information provided by the commissioner to the board must contain the numeric value assigned to the IMb barcode and a full report from the United States Postal Service.

f. A board member from each political party for partisan elections or two members from the board for nonpartisan elections shall review the IMb Tracing information provided by the commissioner and shall certify the information by initialing the envelope and report.

g. If the board concludes that the IMb Tracing information verifies that the absentee ballot entered the federal mail system by the deadline specified in Iowa Code ~~chapter 53~~ sections 9E.6 and 53.44, the absentee ballot shall be counted.

21.14(3) Report to the state commissioner. A commissioner who makes use of IMb Tracing shall file a report with the state commissioner for each general election no later than the first day of December following each general election. The report shall be on a form prescribed by the state commissioner.

This rule is intended to implement Iowa Code sections ~~53.17 and 53.22 as amended by 2016 Iowa Acts, House File 2273, sections 11 to 15~~ 9E.6, 53.17A and 53.44.

ITEM 4. Adopt the following **new** rule 721—21.100(39A):

721—21.100(39A) Issuance of technical infractions.

21.100(1) If the state commissioner becomes aware of an apparent technical violation of a provision of Iowa Code chapters 39 through 53, the state commissioner may administratively provide a written notice and letter of instruction to the commissioner or other responsible person regarding proper compliance procedures.

21.100(2) If a commissioner becomes aware of an apparent technical violation of a provision of Iowa Code chapters 39 through 53, the commissioner shall notify the state commissioner in writing for review pursuant to rule 721—21.102(49). The commissioner shall administratively provide a written notice and letter of instruction to the responsible person regarding proper compliance procedures only if the commissioner has direct supervisory authority over the responsible person.

21.100(3) If the state commissioner sends a notice of such a technical infraction to a commissioner, the state commissioner may require a written explanation of the occurrence and the measures that the person took to redress the issues contained within the notice.

21.100(4) Upon the issuance of a technical infraction to a commissioner, the state commissioner shall also impose a fine not to exceed \$10,000 to be deposited in the general fund. The state commissioner shall impose the fine based on the totality of the circumstances regarding the apparent technical violation of Iowa Code chapters 39 through 53. A commissioner's party affiliation shall not be considered when determining the amount of a fine. The state commissioner may consider the number of technical infractions previously issued to a commissioner when determining the amount of a fine. The state commissioner shall provide an explanation of the amount of the fine in the written notice and letter of instruction.

a. The commissioner shall pay a fine issued pursuant to Iowa Code section 39A.6, in full or file an appeal pursuant to Iowa Code chapter 17A within 60 days. The appeals process shall be the same process outlined in 721—Chapter 3.

b. A commissioner who fails to pay a fine in full that was not dismissed pursuant to Iowa Code chapter 17A shall be suspended from office for a period not to exceed two years pursuant to Iowa Code sections 66.7 and 66.8.

c. If a commissioner is suspended pursuant to Iowa Code section 39A.6, the state commissioner shall direct the deputy of the county commissioner to oversee the functions of the office until the suspension is revoked or the office is vacated and a successor is elected. The state commissioner may direct the state commissioner's staff to assist in the performance of the duties of a suspended commissioner.

21.100(5) Upon issuing a technical infraction, the state commissioner shall immediately inform the attorney general and relevant county attorney if the apparent violation constitutes or may constitute election misconduct under this chapter.

This rule is intended to implement Iowa Code section 39A.6.

ITEM 5. Adopt the following new rule 721—21.103(39A):

721—21.103(39A) Election misconduct—investigation.

21.103(1) The attorney general or county attorney shall investigate allegations of election misconduct reported to the attorney general or county attorney. Election misconduct by an election official shall also be investigated for prosecution under Iowa Code chapter 721.

21.103(2) Upon the completion of an investigation required by Iowa Code section 39A.7, the attorney general or county attorney shall submit the results of the investigation to the state commissioner in writing and explain whether the attorney general or county attorney will pursue charges. If the attorney general or county attorney will pursue charges, the attorney general or county attorney shall report the result of the final disposition of the case to the state commissioner.

This rule is intended to implement Iowa Code section 39A.7.

ITEM 6. Amend subrule 21.300(1) as follows:

21.300(1) *Establishment of stations.* Satellite absentee voting stations may be established ~~by the county commissioner of elections or~~ by a petition of eligible electors of the jurisdiction conducting the election.

~~a. *Satellite absentee voting stations established by the county commissioner.* The county commissioner of elections may designate locations in the county for satellite absentee voting stations. Satellite absentee voting stations established by the commissioner shall be accessible to elderly and disabled voters. Satellite absentee voting stations must also be established so as to provide for voting in secret and ballot security.~~

~~b. a. *Satellite absentee voting stations established after receipt of a valid petition.* A petition requesting a satellite absentee voting station shall be substantially in the form titled "Petition Requesting Satellite Absentee Voting Station" available on the state commissioner's website. If the commissioner receives a petition requesting a satellite absentee voting station on or before the petition deadline set forth in Iowa Code section 53.11, the commissioner shall determine the validity of the petition within 24 hours. A petition requesting a satellite absentee voting station is valid if it contains signatures of not less than 100 eligible electors of the jurisdiction county conducting the election who are eligible to vote in the election that is the subject of the petition. Electors signing the petition must include their signature, house number, street, and date the petition was signed. Signatures on lines not containing all of the required information shall not be counted. The heading on each page of the petition shall include the satellite location requested and the election name or date for which the location is requested. Signatures on petition pages without the required heading shall not be counted.~~

~~e. b. *Mandatory rejection of certain satellite absentee voting stations.* Otherwise valid petitions for satellite absentee voting stations shall be rejected within four days of the commissioner's receipt of the petition if:~~

- ~~(1) The site requested is not accessible to elderly and disabled voters,~~
- ~~(2) The site requested has other physical limitations that make it impossible to meet the requirements for ballot security and secret voting, ~~or~~~~

(3) The owner of the site refuses permission to locate the satellite absentee voting station at the site requested on the petition, unless the site is required to serve as a polling place pursuant to Iowa Code section 49.21(2), or

(4) After reasonable efforts, the commissioner is unable to sufficiently staff the satellite absentee voting station to ensure compliance with the laws of this state.

d. c. Discretionary rejection of certain satellite absentee voting stations. Otherwise valid petitions for satellite absentee voting stations may be rejected within four days of the commissioner's receipt of the petition if:

(1) A petition is received requesting satellite voting for a city runoff election and a special election is scheduled to be held between the regular city election and a city runoff election, or

(2) The owner of the site demands payment for its use, unless the site is required to serve as a polling place pursuant to Iowa Code section 49.21(2).

d. Two or more satellite absentee voting petitions. If the commissioner receives valid petitions to establish two or more satellite absentee voting stations located within the same precinct, the commissioner may choose to establish a satellite absentee voting station at only one of the locations.

e. Provision of ballots. Only ballots from the county in which the site is located may be provided at the satellite absentee voting station. Ballots must be provided for the precinct in which the satellite absentee voting station is located; however, it is not necessary to provide ballots from all of the precincts in the political subdivision for which the election is being conducted.

ITEM 7. Amend rule 721—21.303(53) as follows:

721—21.303(53) Mailing absentee ballots. The commissioner shall mail the following materials to each person who has requested an absentee ballot:

1. Ballot. The ballot that corresponds to the voter's residence, as indicated by the residential address on the absentee ballot application.

2. Public measure text. The full text of any public measures that are summarized on the ballot, but not printed in full.

3. Secrecy envelope. Secrecy envelope, if the ballot cannot be folded to cover all of the voting ovals, as required by Iowa Code section 53.8(1).

4. Affidavit envelope. The affidavit envelope, which shall be marked with the I-Voters-assigned sequence number used to identify the absentee request in the commissioner's records.

5. Return envelope. The return envelope, which shall be addressed to the commissioner's office and bear appropriate return postage or a postal permit guaranteeing that the commissioner will pay the return postage and which shall be marked with the I-Voters-assigned sequence number used to identify the absentee request in the commissioner's records. All domestic ~~and UOCAVA~~ return envelope flaps or backs shall also be printed or stamped with a notice in substantially the following form: "This ballot will only be eligible for counting if it is received by the auditor's office before the polls close on election day ~~or postmarked before election day and received by the deadline listed in the voting instructions included with this ballot.~~ **Postmarks are not guaranteed!** Mail the ballot early to make sure it is received on time. Track the status of your absentee ballot at www.sos.iowa.gov."

6. Delivery envelope. The delivery envelope, which shall be addressed to the voter and bear the I-Voters-assigned sequence number used to identify the absentee request in the commissioner's records. All other materials shall be enclosed in the delivery envelope.

7. Instructions. Absentee voting instructions, which shall be in the form required by rule 721—22.250(52).

8. Receipt. The receipt form required by Iowa Code section 53.3, which may be printed on the instructions required by numbered paragraph "7" above.

This rule is intended to implement Iowa Code sections 53.8 and 53.17.

ITEM 8. Rescind rule 721—21.307(49,53) and adopt the following **new** rule in lieu thereof:

721—21.307(53) Absentee ballot drop boxes.

21.307(1) Video surveillance footage retention. Video surveillance footage recorded pursuant to Iowa Code section 53.17(1) “c”(4) shall be maintained for a period of 22 months for elections in which a federal office appears on the ballot, and for 6 months for all other elections, or until there are no more pending contests or criminal actions, whichever is later.

21.307(2) Absentee ballot retrieval. Materials delivered to the ballot drop box shall be retrieved in an expeditious manner, but no less often than four times per day on days in which voters may deposit a voted ballot in the ballot drop box. The ballot drop box does not need to be checked on days in which voters are unable to deposit materials into the drop box.

21.307(3) Notice to voters regarding drop box availability. If a county is providing a ballot drop box for an election, the county shall include information regarding the ballot drop box’s availability, on a form prescribed by the state commissioner, with materials mailed to voters pursuant to Iowa Code section 53.8.

This rule is intended to implement Iowa Code section 53.17.

ITEM 9. Amend rule 721—28.1(47,48A) as follows:

721—28.1(47,48A) State registrar’s responsibility. The state registrar of voters is responsible for the implementation of a single, uniform, official, centralized, interactive, computerized statewide voter registration file of every legally registered voter in the state. This file is known as ~~I-VOTERS~~ I-Voters. These rules regulate access to the file by county registrars and others and set forth protocols for adding, changing or deleting file information.

ITEM 10. Amend rule 721—28.2(48A) as follows:

721—28.2(48A) Access and fees.

28.2(1) The state registrar and county registrars shall grant access to the ~~I-VOTERS~~ I-Voters database consistent with the Iowa Code and the security plan for the system. Authorized users of the system shall be issued secure password-protected access that is monitored by the state registrar. Access may be denied or revoked by the state registrar for violation of the security policy.

28.2(2) No change.

28.2(3) Statewide or congressional district voter registration information from ~~I-VOTERS~~ I-Voters may be obtained only from the state registrar. Voter registration information from ~~I-VOTERS~~ I-Voters other than statewide or congressional district information may be obtained from the state registrar or a county registrar. A county registrar may provide from ~~I-VOTERS~~ I-Voters voter registration information for a district or other jurisdiction that is located in whole or in part within the registrar’s county.

ITEM 11. Amend rule 721—28.3(48A) as follows:

721—28.3(48A) Duplicate and multiple voter registration record deletion process.

28.3(1) The state registrar shall provide a search function within the ~~I-VOTERS~~ I-Voters software to search for likely duplicate or multiple voter registration records. County registrars shall have the capability to activate this function.

28.3(2) During each calendar quarter, the county registrar shall activate the search function described in subrule 28.3(1) and review the list of likely duplicate or multiple voter registration records. The county registrar shall resolve duplicate or multiple records for the same voter. No voter shall have more than one voter record. The voter record associated with the most recent registration or other voter-initiated activity shall be considered the voter’s current record. The voter shall be registered in the county of current record, and the voter record in any other county shall be merged with the record in the current county. Individual voter history and other voter data shall be transferred to the voter’s record in the current county of registration.

28.3(3) ~~The state registrar shall periodically engage in interstate checking of voter registration records with cooperating states for the purpose of identifying duplicate or multiple voter registration records. A list of likely matches of records based upon predetermined search criteria shall be timely sent to each county registrar request information from the electronic information registration center~~

regarding the existence of duplicate registrations. Within 15 days of a county registrar's receipt of notification from the state registrar of the existence of a duplicate or multiple record, the county registrar shall follow the process outlined in subrule 28.3(2).

28.3(4) On an ongoing basis, the state registrar shall request reports from the electronic information registration center for the purpose of engaging in interstate checking of voter registration records with other participating states. The purpose of these interstate checks is to identify duplicate or multiple voter registration records. A report based on information provided by the electronic information registration center shall be timely provided to each county registrar.

28.3(4) 28.3(5) Within 15 days of the receipt of a list report produced by the state registrar in accordance with 28.3(3) subrule 28.3(4), the county registrar shall review the list of likely duplicate or multiple voter registration records and determine the accuracy of the search results. If the voter is found to be registered to vote in another state more recently than the voter's last voter-initiated activity in Iowa, the commissioner shall make the voter's status "inactive" and the voter shall be mailed a forwardable National Voter Registration Act-compliant confirmation notice. The notice shall contain a statement in substantially the following form:

Information received by this office indicates that you are no longer a resident at the address printed on the reverse side of this card. If this information is not correct, and you still live at that address, please complete and mail the attached postage-paid card at least ~~10 days before the primary or general election, or at least 11~~ 15 days before any other election at which you wish to vote. If the information is correct and you have moved ~~within the county, you may update your registration by listing your new address on the card and mailing it back. If you have moved outside the county~~ outside the state of Iowa, you may check the box below requesting cancellation of your Iowa voter registration to ensure you are not registered to vote in more than one state. If you have moved within the state of Iowa, please contact a local official the county auditor in your new location for assistance in registering there updating your voter registration or visit sos.iowa.gov/register for more information. If you do not mail in the card, you may be required to show identification before being allowed to vote in [name of county] County, Iowa. If you do not return the card and you do not vote in an election in [name of county] County, Iowa, on or before (date of second general election following the date of the notice), your name will be removed from the list of voters in that county.

28.3(5) 28.3(6) County registrars shall cooperate with each other to ensure that voter records are properly merged into the current county file.

ITEM 12. Amend rule 721—28.4(48A) as follows:

721—28.4(48A) Cancellations and restorations of voter registration due to felony conviction.

28.4(1) Based upon information provided to the state registrar by the state or federal judicial branch and by the governor, the state registrar shall maintain a list of felons convicted in State of Iowa District Courts and the United States District Courts of the Northern and Southern Districts of Iowa and a list of convicted felons whose voting rights have been restored by the governor of Iowa. Periodically, these lists shall be matched with I-VOTERS I-Voters. Based upon predetermined search criteria, a list of likely matches of ineligible voters shall be produced for each county and provided to each county registrar.

28.4(2) and 28.4(3) No change.

28.4(4) New applicants for registration entered into I-VOTERS I-Voters by a county registrar shall be electronically matched against the list of convicted felons in the file, and applicants disqualified due to felony conviction shall not be registered as voters. The county registrar shall notify the registration applicant of the applicant's disqualification in the same manner as provided for in subrule 28.4(2) above.

ITEM 13. Adopt the following new rule 721—28.7(48A):

721—28.7(48A) Voter list maintenance reports. The reporting requirements in Iowa Code section 48A.40 shall be met by the county registrar entering registration information into I-Voters in accordance with guidance prescribed by the state registrar.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/1/21.